D.B.CIVIL SPECIAL APPEAL (W) NO. 169/2007
Nityanand v. The State of Rajasthan & Ors.

Date of order : 28.05.2007.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

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Shri Manish Bhandari for the appellant.
Shri H.V. Nandwana Dy.GA for the State.

This special appeal is directed against the order of the learned Single Judge dated 22.1.2007 in S.B. Civil Writ Petition no.410/2007 dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the order dated 12.1.2007 by which he was removed from service on the ground of conviction in a criminal case under Section 61/1/14 of the Excise Act.

The case of the appellant is that a departmental enquiry was initiated against him on the same set of facts which was kept in abeyance by order dated 12.5.1999 on account of pendency of the aforementioned criminal case. In the criminal case the appellant was initially convicted by the trial court on 11.7.2003 but ultimately acquitted by the appellate court on 12.3.2007. The conviction being the solitary ground, the removal is liable to be set aside. On behalf of the State, it was submitted that the appellant was given benefit of doubt and he is not entitled to any relief.

It is not in dispute that the charges in the departmental proceeding and the criminal case were based on the same set of facts. The enquiry was kept in abeyance vide order dated 12.5.1999 awaiting the result of the criminal case. In the criminal case the appellant was convicted on 11.7.2003 but the conviction was set aside on 12.3.2007. It is immaterial whether the appellant was given benefit of doubt. If the appellant is denied the benefit of reinstatement, it would amount to condemning him without any inquiry. Had the appellant been removed/dismissed from service on the basis of findings in the departmental enquiry, certainly, the position would have been different. But when the sole basis of conviction has become non-existent, it would follow that removal has to be set aside and the appellant has to be held entitled to reinstatement.

Counsel for the State alternatively submitted that if the appellant is to be reinstated, liberty may be given to resume departmental enquiry which was kept in abeyance by order dated 12.5.1999. Counsel for the appellant does not oppose this submission.

We accordingly set aside the order of the learned Single Judge as also the removal order dated 12.1.2007 but with a liberty to the concerned authorities to resume the enquiry and take the matter to its logical end in accordance with law.

The appeal thus stands disposed of.

(MOHAMMAD RAFIQ), J. (S.N.JHA), C.J.

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